

§ 904.505

and satisfactory claim for property appraised at \$500,000 or less is submitted to NOAA, the matter will be referred to the U.S. Department of Justice to institute *in rem* proceedings in the appropriate U.S. District Court.

§ 904.505 Summary sale.

(a) In view of the perishable nature of fish, any person authorized to enforce a statute administered by NOAA may, as authorized by law, sell or cause to be sold, and any person may purchase, for not less than its domestic fair market value, fish seized under such statute.

(b) Any person purchasing fish subject to this section must deliver the proceeds of the sale to a person authorized to enforce a statute administered by NOAA immediately upon request of such authorized person. Anyone who does not so deliver the proceeds may be subject to penalties under the applicable statute or statutes.

(c) NOAA will give Notice of the Sale as provided under § 904.3, to the owner or consignee, if known or easily ascertainable, or to any other party that the facts of record indicate has an interest in the seized fish, unless the owner or consignee or other interested party has otherwise been personally notified. Notice will be sent either prior to the sale, or as soon thereafter as practicable.

(d) The proceeds of the sale, after deducting any reasonable costs of the sale, will be subject to any administrative or judicial proceedings in the same manner as the seized fish would have been, including an action *in rem* for the forfeiture of the proceeds. Pending disposition of such proceedings, the proceeds will, as appropriate, either be deposited in a NOAA suspense account or submitted to the appropriate court.

(e) Seizure and sale of fish is without prejudice to any other remedy or sanction authorized by law.

§ 904.506 Remission of forfeiture and restoration of proceeds of sale.

(a) *Application of this section.* (1) This section establishes procedures for filing with NOAA a petition for relief from forfeitures incurred, or alleged to have been incurred, and from potential forfeiture of seized property, under any statute administered by NOAA that au-

thorizes the remission or mitigation of forfeitures.

(2) Although NOAA may properly consider a petition for remission or mitigation of forfeiture and restoration of proceeds of sale along with other consequences of a violation, the remission or mitigation of a forfeiture and restoration of proceeds is not dispositive of any criminal charge filed, civil penalty assessed, or permit sanction proposed, unless NOAA expressly so states. Remission or mitigation of forfeiture and restoration of proceeds is in the nature of executive clemency and is granted in the sole discretion of NOAA only when consistent with the purposes of the particular statute involved and this section.

(3) If no petition is timely filed, or if the petition is denied, prior to depositing the proceeds NOAA may use the proceeds of sale to reimburse the U.S. Government for any costs that by law may be paid from such sums.

(4) If NOAA remits the forfeiture and the forfeited property has not been sold, then restoration may be conditioned upon payment of any applicable costs as defined in this subpart.

(b) *Petition for relief from forfeiture.* (1) Any person claiming an interest in any property which has been or may be administratively forfeited under the provisions of this section may, at any time after seizure of the property, but no later than 90 days after the date of forfeiture, petition the Assistant General Counsel for Enforcement and Litigation, NOAA/GCEL, 8484 Georgia Avenue, Suite 400, Silver Spring, Maryland 20910, for a remission or mitigation of the forfeiture and restoration of the proceeds of such sale, or such part thereof as may be claimed by the petitioner.

(2) The petition need not be in any particular form, but must set forth the following:

- (i) A description of the property seized;
- (ii) The date and place of the seizure;
- (iii) The petitioner's interest in the property, supported as appropriate by bills of sale, contracts, mortgages, or other satisfactory evidence;
- (iv) The facts and circumstances relied upon by the petitioner to justify

15 CFR Ch. IX (1-1-07 Edition)

the remission or mitigation of forfeiture and restoration of proceeds. If the claim is made after the property is forfeited, the petitioner must provide satisfactory proof that the petitioner did not know of the seizure prior to the declaration or condemnation of forfeiture, was in such circumstances as prevented him or her from knowing of the same, and that such forfeiture was incurred without any willful negligence or intention to violate the applicable statute on the part of the petitioner; and

(v) The signature of the petitioner, his or her attorney, or other authorized agent.

(3) NOAA will not consider a petition for remission or mitigation of forfeiture and restoration of proceeds while a forfeiture proceeding is pending in Federal court. Once such a case is referred to the U.S. Department of Justice for institution of judicial proceedings, and until the proceedings are completed, any petition received by NOAA will be forwarded to the U.S. Department of Justice for consideration.

(4) A false statement in a petition will subject petitioner to prosecution under 18 U.S.C. 1001.

(c) *Investigation.* NOAA will investigate the facts and circumstances shown by the petition and seizure, and may in this respect appoint an investigator to examine the facts and prepare a report of investigation.

(d) *Determination of petition.* (1) After investigation under paragraph (c) of this section, NOAA will make a determination on the matter and notify the petitioner. NOAA may remit or mitigate the forfeiture, on such terms and conditions as are deemed reasonable and just under the applicable statute and the circumstances.

(2) Unless NOAA determines no valid purpose would be served, NOAA will condition a determination to remit or mitigate a forfeiture upon the petitioner's submission of an agreement, in a form satisfactory to NOAA, to hold the United States and its officers or agents harmless from any and all claims based on loss of or damage to the seized property or that might result from grant of remission or mitigation and restoration of proceeds. If the petitioner is not the beneficial owner

of the property, or if there are others with a proprietary interest in the property, NOAA may require the petitioner to submit such an agreement executed by the beneficial owner or other interested party. NOAA may also require that the property be promptly exported from the United States.

(e) *Compliance with the determination.* A determination by NOAA to remit or mitigate the forfeiture and restore the proceeds upon stated conditions, as upon payment of a specified amount, will be effective for 60 days after the date of the determination. If the petitioner does not comply with the conditions within that period in a manner prescribed by the determination, or make arrangements satisfactory to NOAA for later compliance, the remission or mitigation and restoration of proceeds will be void, and judicial or administrative forfeiture proceedings will be instituted or resumed.

(f) *Appropriated property.* If forfeited property that is the subject of a claim for restoration of proceeds has been appropriated for official use, retention by the U.S. Government will be regarded as a sale for the purposes of this section.

§ 904.507 Recovery of certain storage costs.

If any fish, wildlife, or evidentiary property is seized and forfeited under the Endangered Species Act, 16 U.S.C. 1531 through 1543, any person whose act or omission was the basis for the seizure may be charged a reasonable fee for expenses to the United States connected with the transfer, board, handling or storage of such property. If any fish or wildlife is seized in connection with a violation of the Lacey Act Amendments of 1981, 16 U.S.C. 3371 through 3378, or any property is seized in connection with a violation of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 through 1882, any person convicted thereof, or assessed a civil penalty therefor, may be assessed a reasonable fee for expenses of the United States connected with the storage, care and maintenance of such property. Within a reasonable time after forfeiture, NOAA will send to such person by registered or certified mail, return receipt